

**City of
Minneapolis**

**ADMINISTRATIVE ENFORCEMENT
AND
HEARING PROCESS**

**BENCHBOOK
FOR
HEARING OFFICERS**



**City Clerk's Office
Room 304, City Hall
350 South Fifth Street
Minneapolis, MN 55415**

1. INTRODUCTION

1.1 Intent.

The Minneapolis Administrative Enforcement and Hearing Process was created by the City of Minneapolis as an alternative forum for enforcing City ordinances. The City previously used the criminal justice system for enforcement of its ordinances but found that system to be somewhat unsatisfactory:

- a. The higher burden of proof does not appear appropriate for most administrative violations.
- b. The potential of serving jail time does not appear appropriate for most administrative violations.
- c. The criminal justice system does not always recognize City ordinance violations as serious or important.
- d. Judges sometimes are unwilling to hold trials over what are perceived to be minor problems, or if a trial is conducted, only nominal penalties are imposed.
- e. The cost of criminal prosecution often outweighs the penalty imposed.

The Administrative Adjudication and Enforcement Process is intended to avoid these disadvantages and to provide a forum which is more informal and less threatening to alleged violators.

1.2. Authority.

The Minneapolis City Charter authorizes the City Council to establish by ordinance a procedure for imposing a civil penalty not exceeding \$2,000 for each violation of a city ordinance. This procedure must provide an opportunity for the accused to be heard by a neutral party.

The City Council adopted Minneapolis Code of Ordinances, Title 1, Chapter 2, to govern administrative enforcement of the ordinances, including imposition of civil penalties. Pursuant to this Chapter, enforcement is commenced by the issuance of an administrative citation. The recipient may pay a fine established by City Council resolution or may request a hearing. If a hearing is requested, the procedures in this handbook are followed.

2. PRE-HEARING PROCEDURE

2.1 Selection of Hearing Officers.

The City department that issues the citation will select a hearing officer from the list of lawyers approved by the City Council. The City department will select the hearing officer from this list by taking the first name appearing on the list, and working down the list. The department will contact the selected lawyer and indicate the types of cases and the names of the people involved.

2.2 Self-Disqualification.

Upon being assigned to a case, you must decide if there are grounds to self-disqualification. Grounds for such disqualification include:

- A. Personal interest in the action.
- B. Finance interest in the action.
- C. Relationship to any party.
- D. Former counsel for party. If any member of your firm would be disqualified under this provision, you are also disqualified.
- E. Bias or prejudice.

If grounds for self-disqualification exist, they may be disclosed to the parties in writing and expressly waived by the parties in writing. Otherwise, you must notify the City department of the disqualification, and another hearing officer will be selected.

2.3 Disqualification by Party.

No later than five days before the date of the hearing, any party may file a written request with the City department to remove the assigned hearing officer. The first such request by an accused will automatically be granted. Any subsequent request by an accused for the same matter and any request by the City will be referred to the assigned hearing officer, who will decide whether he or she cannot fairly and objectively hear the case. You must issue a written decision by the date of the hearing. If you grant the request, you should file the decision with the appropriate City department as quickly as possible to allow for assignment of another hearing officer. If the request is not granted, you may either (a) file the decision with the City department who will mail it to the requesting party or (b) serve it upon the requesting party at the scheduled hearing.

2.4 Hearing Time and Date.

The City department must schedule a hearing to occur within 30 days after receiving the accused's request for a hearing. The City department office will contact you for an available date and schedule the time and place for the hearing. You will

generally be expected to be available for one-half of a day or an evening. More than one matter may be scheduled for hearing during that time.

2.5 Notice of Hearing.

At least 10 days before the scheduled date, the City department will send a notice of the hearing date, time, and location to you and all parties, unless a shorter time is accepted by all parties. The notice will contain the names of the parties and the type of violation alleged.

2.6 Continuances.

A continuance of the hearing may be granted only by the appropriate City department, for good cause shown. Generally, continuances should be for no more than 10 days.

2.7 Pre-Hearing Communications.

Except for a subpoena request (see below), there must be no ex parte communication between you and the parties or parties' representatives. All scheduling and continuances will be handled by the City department.

2.8 Subpoenas.

Upon your own initiative or upon written request of a party who demonstrates the need, you may authorize issuance of a subpoena for the attendance of a witness or the production of documents which are material to the matter being heard. If you authorize a subpoena, notify the City department who will obtain the necessary subpoena from the Hennepin County District Court (which will issue the subpoena based on authority of the Minneapolis City Charter).

The party requesting the subpoena is responsible for serving it in the same manner as civil actions and paying fees and expenses of the witness. A person served with a subpoena may file an objection with you before time for compliance. You may cancel or modify the subpoena if it is unreasonable or oppressive.

You must notify the City department if someone fails to comply with a subpoena. Failure to comply with a subpoena is a misdemeanor and constitutes contempt of court.

3. HEARING PROCEDURE

3.1 Reporting.

You are requested to report to the designated hearing location at least 15 minutes before the scheduled hearing. This will allow for any administrative tasks and last-minute changes. You may also review the file(s) at this time.

3.2 Failure to Appear.

The failure of an accused to appear constitutes an admission of the violation. You may proceed to impose a penalty. If the City representatives fail to appear, the charge must be dismissed. If the absent person contacts you or the City department within a reasonable time after the scheduled hearing, you will be asked to rule on whether there was good cause for the absence. Examples of good cause are: death or incapacitating illness of the accused; a court order requiring the person to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. Good cause does not include: forgetfulness and intentional delay.

3.3 Hearing Introduction.

You should begin the hearing by introducing yourself and emphasizing your neutrality. You should also explain your role and how the hearing will proceed. You may also explain at this time the right to appeal.

3.4 Hearing Procedure.

The City department will provide a tape recorder and tapes, and the hearing must be recorded. A representative from the City department may be present to assist you. The procedure should be informal, without strict rules of evidence. You should make such rulings and take such action as deemed necessary to conduct a dignified and orderly hearing. You will determine whether to allow opening and/or closing statements. The parties have the right to present testimony and cross-examine each other's witnesses. The City bears the burden of proving a violation and should proceed first.

You must administer an oath or affirmation to each witness. You will receive testimony and exhibits and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. Because this is a civil matter, you must find a violation only if the greater weight of the evidence supports such a finding.

3.5 Decision.

You have the authority to determine that a violation occurred, to dismiss a charge, to impose the fine established in the City Council-approved schedule, and to reduce, increase, stay, or waive the established amount of the fine either unconditionally or upon compliance with appropriate conditions.

When a violation is found, you may consider any or all of the following factors in imposing a penalty:

- A. the duration of the violation,
- B. the frequency of reoccurrence of the violation,

- C. the seriousness of the violation,
- D. the history of the violation,
- E. the violator's conduct after issuance of the notice of hearing, the good faith effort by the violator to comply,
- F. the economic impact of the penalty on the violator, the impact of the violation upon the community,
- G. the violator's record of prior City code violations, and
- H. any other factors appropriate to a just result.

You may impose a fine greater than the established fine, when the actual costs of enforcement are shown to be greater than the amount of the scheduled fine. You may impose a penalty for each day of a continuing violation if (a) the violation caused a serious threat of harm to the public health, safety, or welfare or (b) the accused intentionally and unreasonably refused to comply with the city code requirement.

3.6 Filing the Decision.

You should try to announce your decision at the end of the hearing. If you feel uncomfortable in doing so, because of the desire for time to review evidence and reflect or because of an emotional party, you may announce that you are taking the matter under advisement.

You must place your decision in writing with a brief description of your basis for the decision. A form will be provided for your convenience. If you make your decision at the end of the hearing, the City department representative will make copies for the parties. If a clerk is not present, call the City department at _____.

If you take additional time to make a decision, you must provide a written decision to the City department within ten (10) days. That office will mail a copy to the parties.

4. POST-HEARING PROCEDURES

4.1 Appeal.

In most cases, your decision will be final without the right to make an administrative appeal. The aggrieved party may, however, appeal your decision to the Minnesota Court of Appeals by writ of certiorari.

4.2 Time to Pay.

The violator may have 30 days within which to pay the fine. A late payment fee of 10% of the fine will be imposed after that time.

4.3 Consequences of Failure to Pay.

If the person does not pay the fine, the City may:

- A. Assess the penalty against real property in the city that was the subject of the violation if the owner was responsible for the violation.
- B. Obtain a judgment and begin collection procedures.
- C. Suspend or revoke a City-issued license that is associated with the violation.
- D. Commence a criminal proceeding in District court for failing to pay.

5. ADMINISTRATIVE MATTERS

5.1 Hearing Officer's Fees.

The hearing officer must submit to the City department a signed application for fees on the form provided. No fees will be paid if any of the officer's decisions have not been timely filed, without good cause, at the City department. The fee will be \$100 per half-day or evening for hearings and \$10 each for your action on a request for disqualification, for a subpoena, for quashing a subpoena, or for a finding of good cause for a non-appearance.

5.2 Custody of File.

You should give all exhibits submitted at the hearing and the tape recording to the appropriate City department. If a party wishes to withdraw an exhibit, the department will make a copy to keep with the department's file. You are not expected to retain your notes regarding the matter.

PENALTY

DATE: _____

Hearing Officer

City of

Minneapolis

ADMINISTRATIVE ENFORCEMENT AND HEARING FINE SCHEDULE

F E E D B A C K

Minneapolis Administrative Enforcement and Hearing Process

As a participant in the Minneapolis Administrative Enforcement and Hearing process, your feedback about the system is invaluable. Would you please take a few minutes and answer the following questions.

1. Was the Benchbook written in a way that you could easily understand?

Yes No

If your answer is no, what should be changed?

2. Were your contacts with the City department satisfactory?

Yes No

3. Were you satisfied with the room arrangements and assistance during the hearing?

Yes No

If your answer is no, please explain.
